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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES
PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding Observations of the Human Rights Committee

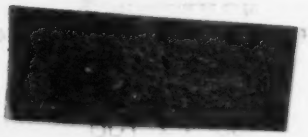
BOLIVIA

1. The Committee considered the second periodic report of Bolivia (CCPR/C/63/Add.4 and HRI/CORE/1/Add.54) at its 1562nd and 1563rd meetings on 25 March 1997 (CCPR/C/SR.1562 and SR.1563) and subsequently adopted* the following comments:

A. Introduction

2. The Committee welcomes the second periodic report submitted by the State party and the delegation's willingness to engage in a frank dialogue with the Committee. The Committee regrets, however, that although the report provides information on general legislative reforms in Bolivia, they remain largely unadopted by Parliament. The delegation candidly admitted that there have been difficulties in the implementation of all the reforms which would when approved create a legal system more compliant with the Covenant. The Committee appreciated the presence of a highly competent delegation which provided in-depth helpful information to the Committee in addressing its questions and thus allowed it to obtain a clearer view of the overall human rights situation in the State party.

3. The Committee commends the State party for the core document (HRI/CORE/1/Add.54), which set out many of the problems existing in the country.



* At the 1582nd meeting (Fifty-ninth session), held on 9 April 1997.

B. Factors and difficulties affecting the implementation of the Covenant

4. The Committee recognizes that the State party, which is emerging from a change of government that ended a long period of dictatorial rule, is undergoing a transition towards democracy in which the infrastructure necessary for the implementation of the Covenant has not been fully developed. The Committee notes that many encouraging legislative initiatives with respect to human rights are meeting with difficulties, and that a full assessment of their implementation is not yet possible.

5. The Committee notes that social and economic disparities are all-pervasive in the country and result in high levels of poverty and illiteracy, and lack of opportunity especially for the indigenous population, women and the poor.

C. Positive aspects

6. The Committee notes with satisfaction the efforts of the Government of Bolivia to introduce democracy and to match the country's level of human rights protection with international standards.

7. The Committee particularly welcomes the promulgation of the 1994 Constitution, which incorporates provisions for the protection of civil and political rights. The Committee welcomes the Government's declared intention to put an end to serious violations of human rights and to create a better political, constitutional and legal framework to allow the full implementation of the rights enshrined in the Covenant.

8. The Committee notes with satisfaction the reform of the Penal Code which abolishes the death penalty.

9. The Committee also welcomes the legal reforms undertaken, notably constitutional amendments to bring Bolivian law into conformity with international human rights standards, the adoption of legislation to abolish imprisonment and physical constraint for the enforcement of economic obligations (Ley de Abolición de Prisión y Apremio Corporal por Obligaciones Patrimoniales), the new Bail Act (Ley de Fianza Juratoria contra la Retardación de Justicia Penal), the law against domestic violence (Ley contra la Violencia Intrafamiliar o Doméstica), and the reforms in the legislation governing the electoral system (Ley de Reformas y Complementacion al Régimen Electoral), the legal aid programme (Programa de Defensa Pública) and habeas corpus and amparo.

10. The Committee welcomes the reinstitution after 100 years of the Ministry of Justice, as well as the establishment of the Human Rights Department within the Ministry of Justice and the establishment of the Gender Department. The Committee also welcomes the creation of the necessary legal machinery to receive complaints and manage various aspects of human rights issues, including through the Ministry of Justice, the Parliamentary Commission for Human Rights, Legal Aid and the Public Prosecutors Office, and the creation of a human rights office in the Chapare area.

11. The Committee welcomes the information that torture, forced disappearances and extrajudicial executions are punishable offences in Bolivia. It also welcomes the information that military tribunals have no jurisdiction except within the military institution and that cases of human rights violations by members of the army and the security forces fall under the jurisdiction of civil courts.

12. The Committee further welcomes the fact that the number of persons being held in pretrial detention has significantly decreased.

13. The Committee notes the penal reforms that have abolished the discrimination against the Amazon Indians where it was considered that they were not criminally responsible by mere reason of their Indian origin. It also welcomes the reforms that have introduced legislation which allows the indigenous populations to receive education in their mother tongues, and the enactment of measures which permit the Indian communities to maintain their traditional means of livelihood.

D. Principal subjects of concern

14. The Committee is concerned that the State party's legislation in respect of the state of siege does not comply with the provisions of the Covenant. There is no constitutional provision which prohibits the derogation of the relevant rights of the Covenant and the expression "conmocíon interior" ("internal disturbance") is much too wide to fall within the scope of article 4 of the Covenant. Furthermore, the Committee is concerned that minimum guarantees were not complied with during the state of siege declared in 1995.

15. The Committee is concerned that the current legislation for combating impunity has proven to be ineffective in the identification, trial and punishment of those responsible for human rights violations, and in the payment of compensation to the victims. It also notes that members of the armed forces and other government officials who were involved in the most serious human rights violations have not always been dismissed, and continue to take advantage of their positions, thus reinforcing impunity within the State party. It is also concerned at the delays and failures of the process of law and at the non-compliance by the police with United Nations minimum standards.

16. The Committee notes with concern that members of various social sectors, particularly human rights activists and members of trade unions, are subject to intimidation, thus facing serious obstacles in the legitimate exercise of their rights.

17. The Committee is concerned that national laws in conflict with the Covenant remain on the books, in particular the Coca and Controlled Substances Law (Law No. 1008). The Committee is particularly concerned that articles 86 and 116 of this law remove the investigating process from judicial control, that the right to bail is severely restricted, that articles 74 and 125 deny the right of detainees who are ill to be treated with humanity, and that other provisions undermine the presumption of innocence (arts. 82 and 117), the

right to an impartial tribunal (arts. 82 and 127), the right of defence (art. 117), the right to be tried in one's presence (art. 113) and the right to challenge any aspect of the process (art. 128).

18. The Committee is particularly concerned that release on bail is never possible for those persons charged with offences that carry a penalty of two or more years of imprisonment and that the presumption of innocence is not respected under current Bolivian legislation.

19. The Committee expresses concern about the lack of independence and efficiency of the judiciary and the long delays in the administration of justice, which do not conform with the requirements of articles 9 and 14 of the Covenant.

20. The Committee notes with concern the conditions in places of detention.

21. The Committee is concerned that, despite constitutional guarantees of the rights of women and laws attempting to put an end to discrimination, women continue to receive unequal treatment in Bolivia owing in part to the continuation of traditional attitudes and outdated laws that clearly contradict the provisions of the Covenant. It further notes, that labour laws do not protect the rights of women adequately, particularly those engaged in domestic work.

22. The Committee expresses its concern about the very high level of maternal mortality referred to in the report, much of which arises as a result of illegal abortion. In this regard, it regrets that the State party could not provide information about the effect of laws that criminalize abortion on this high level of deaths.

23. The Committee is also concerned about the exploitation of children in employment, including the practice of the "criadito" and the growing numbers of street children.

24. The Committee is concerned at the curtailment of the rights of members of trade unions to the freedoms of association, assembly and expression, at the high levels of violence against trade union members, at the intimidation by police agents of persons taking part in peaceful demonstrations, and at the high number of strikes that are deemed illegal. It is particularly concerned about the incidents that occurred in Potosi and Chapare.

25. The Committee expresses concern at the impact of violence on the part of the security forces, which curtails the enjoyment by members of indigenous groups of their rights under article 27 of the Covenant. In that connection, the Committee is concerned that despite the legislation enacted to allow the indigenous communities to enjoy the use of their traditional lands in a communal way, discrimination and other obstacles to the full enjoyment of the rights protected under article 27 of the Covenant continue to exist.

E. Suggestions and recommendations

26. The Committee strongly encourages the Government to enact the new draft legal framework for the protection of human rights in the State party to

ensure full conformity with the Covenant, in particular the new Code of Criminal Procedure, aimed at the modernization of the Bolivian legal and judicial structures and allowing the investigation and punishment of human rights violations.

27. The Committee urges the State party to put into place the necessary mechanisms to avoid a recurrence of the events surrounding the 1995 state of siege, where the police used excessive violence against the members of teachers' unions.

28. The Committee urges the State party to investigate allegations of human rights violations, in order to bring to justice perpetrators of past and present human rights abuses. It recommends that an independent mechanism be instituted for dealing with complaints of police violence and that the existence of this mechanism be publicized. It further urges the State party to act on the findings of its investigations, to bring to justice the perpetrators and to provide proper compensation to the victims, particularly with respect to continuing occurrences of torture and ill-treatment by the police and security forces.

29. The Committee recommends that the State party amend Law 1008, in order to make it compatible with the State party's obligations under the Covenant.

30. The Committee urges the State party to comply with article 10, paragraph 2 of the Covenant by separating accused persons from convicted persons in prison, and juvenile offenders from adults.

31. The Committee recommends that the Office of Ombudsman and the Constitutional Court be put into place as soon as possible and that both be given broad jurisdiction and sufficient resources to guarantee the enjoyment of human rights.

32. The Committee urges the State party to take effective measures to abolish the practice of the "criadito".

33. The Committee recommends that an educational programme be devised so that all segments of the population, in particular members of the army, security forces and the police, and members of the judiciary and lawyers, are better acquainted with international standards for the protection and observance of human rights and human dignity.

34. The Committee recommends that the independence of the judiciary be ensured and a law regulating it be enacted. It further recommends that the nomination of judges should be based on their competence and not their political affiliation. The Committee also recommends that responsibility for the judicial police be transferred from the executive to the judiciary.

35. The Committee recommends that further measures, such as those of the "Justicia Communal", be taken to ensure that members of indigenous groups are protected against violence within the country and enjoy fully their rights under article 27 of the Covenant, particularly with regard to preservation of their culture, language and religion. The legislation on indigenous communities should be enacted without delay.

36. The Committee recommends that the State party include in its next report comprehensive information on the issues raised during the consideration of the report, particularly on the effectiveness of the laws under review or in existence, the evolving roles of the institutions established for the protection of human rights, and the system of coordination of the various institutions. In this regard, the Committee recommends that the Government draw on the assistance available through the programme of technical cooperation of the High Commissioner/Centre for Human Rights.

37. The Committee urges that respect for human rights be institutionalized at all levels of government, and recommends that human rights education be provided in schools at all levels and that the present concluding observations be widely disseminated.